

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GAIL CLAYTON, and
THOMAS ALLEN CLAYTON
Plaintiffs,

v.

CITY OF BURLINGTON IN
NORTH CAROLINA, CLYDE
ALBRIGHT, NORTH CAROLINA
ADMINISTRATIVE OFFICE OF
THE COURT, THE BURLINGTON
POLICE DEPARTMENT, and
ALAMANCE COUNTY SHERIFF'S
OFFICE,
Defendants.

1:12CV1158

ORDER AND NOTICE

BEATY, District Judge.

This matter is before the Court on a Recommendation of the United States Magistrate Judge [Doc. #36] recommending that Defendants' Motions to Dismiss [Doc. #23, #26, #29] be granted, that all claims against Defendants City of Burlington, Clyde Albright, Burlington Police Office, and Alamance County Sheriff's Office be dismissed, and that *pro se* Plaintiffs' Motion to Amend [Doc. #34] be denied. The Recommendation was filed on September 8, 2014, and notice was served on the parties pursuant to 28 U.S.C. § 636(b). On September 25, 2014, Plaintiffs filed timely Objections to the Recommendation [Doc. #38]. The Court notes, that Responses to the Objections are not due until October 14, 2014. After reviewing the Objections *de novo* and the portions of the Recommendation to which objections were made, the Court finds that the Objections do not change the substance of the United States Magistrate Judge's ruling and any responses from the Defendants to Plaintiffs' Objections are unnecessary. The Magistrate Judge's Recommendation [Doc. #36] is, therefore, affirmed and adopted.

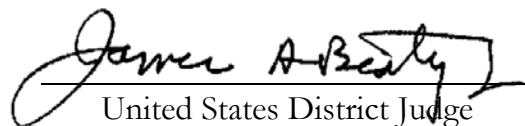
As noted by the Magistrate Judge, Defendant North Carolina Administrative Office of

the Court (“NCAOC”), does not appear to have been properly served and has not entered an appearance in this action. (See Aff. of Service as to NCAOC [Doc. #35]). Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or *on its own after notice to the plaintiff*—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. Pro. 4(m) (emphasis added). If, however, the plaintiff shows good cause for such failure, “the court must extend the time for service for an appropriate period.” Id. Accordingly, Plaintiffs are hereby placed on notice that the Court intends to dismiss NCAOC pursuant to Rule 4(m) if Plaintiffs fail to show good cause as to why NCAOC has not been properly served.

IT IS THEREFORE ORDERED that Defendants’ Motions to Dismiss [Doc. #23, #26, #29] be GRANTED, that all claims against Defendants City of Burlington, Clyde Albright, Burlington Police Office, and Alamance County Sheriff’s Office be DISMISSED, and that Plaintiffs’ Motion to Amend [Doc. #34] be DENIED.

IT IS FURTHER ORDERED that, no later than October 14, 2014, Plaintiffs shall show good cause for their failure to properly serve Defendant NCAOC within 120 days of filing their Amended Complaint. If Plaintiffs fail to establish good cause for such failure, Defendant NCAOC will be dismissed pursuant to Rule 4(m) for improper service.

This, the 30th day of September, 2014.


United States District Judge